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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROLANDO HERNANDEZ,

Plaintiff,

v.

CITY OF VANCOUVER and MARK  
TANNINEN,

Defendants.

Case No. C04-5539 FDB

ORDER GRANTING STAY OF  
ORDER COMPELLING DISCOVERY  
AND STAYING CASE PENDING  
CONSIDERATION OF APPEAL

This matter comes before the Court on Plaintiff's Motion for motion for relief from deadline and stay of order compelling discovery pending consideration of appeal and Defendants cross-motion for stay of proceedings pending appeal. After reviewing all materials submitted by the parties and relied upon for authority, the Court is fully informed and hereby grants Plaintiff's motion and stays the Order of January 5, 2009 pending the appeal. The Court further vacates all current deadlines and the May 26, 2009 trial date and stays all proceedings in this case until the appeal is resolved.

On January 5, 2009, this Court entered an Order granting Defendants' motion to compel production, finding that Plaintiff had waived the attorney client privilege with his former attorney

1 in this matter. Plaintiff has filed an interlocutory appeal of the January 5, 2009. See 28 U.S.C. §  
2 1292; In re Napster, Inc. Copyright Litigation, 479 F.3d 1078, 1088 (9<sup>th</sup> Cir. 2007). When proper  
3 notice of appeal has been timely filed general rule is that jurisdiction over any matters involved in  
4 the appeal is immediately transferred from the district court to the Court of Appeal and district court  
5 is divested of authority to proceed further with respect to such matters, except in aid of the appeal.  
6 Matter of Thorp, 655 F.2d 997, 998 (9<sup>th</sup> Cir. 1981).


7 In aid of the appeal, the Court finds it appropriate to issue a stay of its January 5, 2009 Order  
8 compelling production of attorney-client materials. Because judicial economy favors deciding all  
9 issues in one trial, the Court finds it appropriate to vacate all current deadlines and the May 26,  
10 2009 trial date and stay all proceedings pending the appeal.

11 ACCORDINGLY;

12 IT IS ORDERED:

- 13 1. Plaintiff's motion for relief from deadline and for stay [ Dkt. # 110 and # 98] is  
14 **GRANTED**. The Court's Order Compelling Production [Dkt. # 97] is stayed during  
15 the pendency of appeal.  
16 2. Defendants' cross-motion for stay of case pending appeal [Dkt. # 116] is  
17 **GRANTED**. All current deadlines and the trial date are vacated. The proceedings  
18 in this case are stayed pending appeal.

19 .  
20 DATED this 13<sup>th</sup> day of February, 2009.

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25 FRANKLIN D. BURGESS  
26 UNITED STATES DISTRICT JUDGE